

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2900 of 2000

and

CIVIL APPLICATION NO. 10309 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE D.A.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO LTD.

Versus

HIRABEN LAKHABHAI KOLI,WD/O LATE LAKHABHAI AMRABHAI KOLI

Appearance:

MR PV NANAVALTI for appellant

MR MEHUL S SHAH for Respondents Nos.1 to 4 as
Caveator

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE D.A.MEHTA

Date of decision: 13/11/2000

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

Admit. Issue notice. Mr.Mehul S. Shah waives
the service of notice on behalf of respondents nos.1 to
4. As has been agreed and submitted on behalf of both
the sides present before the Court, the other respondents

need not be served since they are formal parties for the purpose of this appeal against the award of interim compensation.

On the joint request of learned Counsel of the appellant and the respondents nos.1 to 4, the main appeal itself is taken up for final disposal right today.

This appeal under Sec.173 of the Motor Vehicles Act is directed against the order dated 3rd June 2000 passed by the Motor Accident Claims Tribunal (Main), Kachchh at Bhuj below Exh.24 in M.A.C.P. No. 0472/98 under Sec.163A of the Motor Vehicles Act whereby a sum of Rs.2,62,900/- with running interest at the rate of 12% per annum from the date of the application till deposit has been directed to be paid to the claimants. The order of disbursement has also been passed that the claimants nos.2, 3 and 4 each shall get 15% amount out of the total amount deposited with the Tribunal and the claimant no.1 shall get the remaining 55% amount out of the deposited amount. Out of the amounts falling to the shares of minor claimants nos.2 to 4, 20% amount shall be paid to the claimant no.1 through an account payee cheque and the remaining 80% amount shall be invested in FDR in the name of each of the minor claimants separately under the guardianship of claimant no.1 in any Scheduled Bank for a period till the minor claimants nos.2 and 4 attain the age of majority. For claimant no.1, it has been ordered that out of the amount falling in her share, 40% amount should be paid to her through account payee cheque and the remaining amount of 60% shall be invested in FDR in her name in any Scheduled Bank for a period of six years on the terms and conditions mentioned in the body of the impugned order itself.

The present order which is sought to be impugned in this appeal by the appellant Insurance Company is the award under of the Motor Vehicles Act in the nature of an interim award and there is no dispute that it has been passed below Exh.24 in the main petition for claim. The main claim petition is yet to be heard and decided on merits. The order impugned in the present appeal is obviously subject to adjustment against the final award that may be passed in the main claim petition. It has also been pointed out by both the sides that the Court has already decided the cases of this nature. We accordingly decide this appeal with the directions as under:

- (i) The claimants shall file an undertaking before the Tribunal within four weeks stating therein

that it would pursue the main claim petition and obtain a judgment and award on merits and that it shall not permit the claim petition to be dismissed for default nor it would withdraw the same.

- (ii) The amount of Rs.25,000/- deposited by the appellant with the Registry at the time of filing the appeal shall be transmitted to the Motor Accident Claims Tribunal (Main), Kachchh, at Bhuj forthwith i.e. latest by 8th Dec.2000. The present appellant is directed to deposit with the Tribunal the entire due amount (i.e. minus the amount of Rs.25,000/- already deposited here) with due cost and interest within a period of six weeks from today.

On such deposit being made, the claimant shall be entitled to withdraw the amount in terms of the impugned order as indicated in the earlier part of this order also. The balance amount shall be invested by the Tribunal in FDR with any Scheduled Bank initially for a period of three years and on maturity, it shall be renewed every year at a time without any further orders in this regard. It will also be open for the claimants to withdraw the periodical interest which may accrue on such deposit.

It will be open for both the sides to raise all factual as well as legal submissions as and when the main claim petition is heard by the concerned Tribunal because this appeal is directed against the order of interim compensation only.

Subject to the aforesaid observations and directions, this appeal is hereby dismissed. No order as to costs.

Since the main appeal itself has been decided, there is no question of stay in the stay application. The Civil Application for stay is hereby rejected.

(M.R. Calla, J.)

(D.A. Mehta, J.)

Sreeram.